



INDIAN NATION

PROGRAM AGREEMENT

Federal Offset Certification for Central Council Tlingit & Haida Indian Tribes of Alaska Tribal Child Support Unit

DSHS Agreement Number

1062-13551

This Program Agreement is by and between the State of Washington Department of Social and Health Services (DSHS) and the Indian Nation identified below.

Administration or Division Agreement Number

Indian Nation Agreement Number

DSHS ADMINISTRATION

DSHS DIVISION

DSHS INDEX NUMBER

CCS CONTRACT CODE

Economic Services Administration

Division of Child Support

127076

3000NC-62

DSHS CONTACT NAME AND TITLE

DSHS CONTACT ADDRESS

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INDIAN NATION NAME

INDIAN NATION ADDRESS

Central Council Tlingit & Haida Indian Tribes of Alaska
Child Support Unit320 West Willoughby Ave, Suite 300
Juneau, AK 99801-INDIAN NATION FEDERAL EMPLOYER
IDENTIFICATION NUMBER

INDIAN NATION CONTACT NAME

920036505

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IS THE INDIAN NATION A SUBRECIPIENT FOR PURPOSES OF THIS PROGRAM AGREEMENT?

CFDA NUMBERS

No

PROGRAM AGREEMENT START DATE

PROGRAM AGREEMENT END DATE

MAXIMUM PROGRAM AGREEMENT AMOUNT

11/1/2010

10/31/2013

Fee For Service

EXHIBITS. When the box below is marked with a check (4) or an X, the following Exhibits are attached and are incorporated into this Indian Nation Program Agreement by reference:

- ☐ Data Security: 6002GD: No Data Security Exhibit
☒ Exhibits (specify): Exhibit A, IRS Confidentiality Documents
☐ No Exhibits.

By their signatures below, the parties agree to the terms and conditions of this Indian Nation Program Agreement and all documents incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Program Agreement shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized, as representatives of their respective governments, to sign this Program Agreement.

INDIAN NATION SIGNATURE

PRINTED NAME AND TITLE

DATE SIGNED

Edward K. Thomas, President
Central Council Tlingit and Haida Indian Tribes of
Alaska

10/25/10

DSHS SIGNATURE

PRINTED NAME AND TITLE

DATE SIGNED

Kathleen Jenkins, Program Administrator
DSHS/Division of Child Support

10/28/2010

1. Government to Government Relations

- a. The Indian Nation named above and the State of Washington are sovereign governments. The Indian Nation and DSHS agree to these Special General Terms and Conditions for the purpose of furthering the government-to-government relationship and to achieve their mutual objectives of providing efficient and beneficial services to the public.
- b. Nothing in this Agreement shall be construed as a waiver of tribal sovereign immunity.

2. Definitions

- a. "Agreement" means this Indian Nation Data Share Agreement, including all documents attached or incorporated by reference.
- b. "Central Contracts Services" means the DSHS contracting office or successor section or office.
- c. "Contracts Administrator" means the DSHS statewide department Contracts Administrator, or successor, of Central Contracts Services or successor section or office.
- d. "CP" means the Custodial Parent.
- e. "CFR" means the Code of Federal Regulations.
- f. "DCS" means the Washington State Department of Social and Health Services, Economic Services Administration, Division of Child Support.
- g. "DSHS" or "the department" means the Department of Social and Health Services of the State of Washington and its administrations, divisions, programs, employees, and authorized agents.
- h. "DSHS Representative" means any DSHS employee who has been delegated contract-signing authority by the DSHS Secretary or his/her designee.
- i. "FA1 and FA3" means Fiscal Analyst an accounting worker (1) and accounting lead worker (3) for DCS.
- j. "FTI" means Federal Tax return and return Information.
- k. "Indian Nation" means the federally recognized Indian Tribe that has executed this Agreement and its designated subdivisions and agencies performing services pursuant to this Agreement and includes the Indian Nation's officers, employees, and/or agents. For purposes of any permitted Subcontract, "Indian Nation" includes any Subcontractor of the Indian Nation and the Subcontractor's owners, members, officers, directors, partners, employees, and/or agents.
- l. "IRC" means Internal Revenue Code.
- m. "IRS" means Internal Revenue Service.
- n. "IRS Publication 1075" is an IRS publication entitled "Tax Information Security Guidelines for Federal, State, and Local Agencies – Safeguards for Protecting Federal Tax Returns and Return Information."
- o. "ITAS" means Information Technology Application Specialist, a DCS SEMS computer program analyst for DCS.
- p. "NCP" means the Non-Custodial Parent.

- q. "Order State" means the state or Tribe that issued the child support order.
- r. "Personal Information" means information identifiable to any person. This includes but is not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security numbers, driver license numbers, other identifying numbers, and any financial numbers.
- s. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute, as of the effective date of such successor, amended, or replacement statute.
- t. "SEMS" means Support Enforcement Management System, the DCS computer system.
- u. "SEO" means Support Enforcement Officer, a DCS child support case worker.
- v. "Subcontract" means a separate contract between the Indian Nation and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Indian Nation is obligated to perform pursuant to any Program Agreement.
- w. "TANF" means Temporary Assistance to Needy Families.
- x. "TCSU" means the Central Council Tlingit and Haida Tribes of Alaska Tribal Child Support Unit that administers a federally approved child support program, and is the entity performing services pursuant to this Indian Nation Program Agreement. The TCSU includes the Tribe's IV-D director and employees. For purposes of this Indian Nation Program Agreement, the TCSU is not considered an employee or agent of DSHS.
- y. "Tribe" means the entity performing services pursuant to this Indian Nation Program Agreement. This includes the Tribe's IV-D director and employees. For purposes of this Indian Nation Program Agreement, the Tribe is not considered an employee or agent of DSHS.
- z. "Tribal IV-D Program" or "Tribal Child Support Program" means the Central Council Tlingit and Haida Tribes of Alaska Tribal Child Support Unit which is the agency designated by the Tribe to administer a federally-approved child support program.
- aa. "Tribal Law" means the resolutions, law, codes, and/or ordinances enacted by the Indian Nation executing this Agreement, and any of the Indian Nation's tribal court decisions interpreting the same. All references in this Agreement to tribal law shall include any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.
- bb. "USC" means the United States Code. All references in this agreement to USC chapters or sections shall include any successor, amended, or replacement regulation, as of the effective date of such successor, amended, or replacement regulation.
- cc. "WAC" means the Washington Administrative Code. All references in this agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation, as of the effective date of such successor, amended, or replacement regulation.

3. Purpose

This Agreement is necessary in order for the DSHS Division of Child Support (DCS) to provide federal offset certification action on cases involving Central Council Tlingit and Haida Indian Tribes of Alaska Tribal Child Support Orders.

4. Assignment

The Indian Nation shall not assign this Agreement, or its rights or obligations, without obtaining prior written consent of DSHS. DSHS shall not recognize any assignment without such prior written consent. In the event that consent is given and this Agreement is assigned, all terms and conditions of this Agreement shall be binding upon the Indian Nation's successors and assigns.

5. Compliance with Applicable Law

At all times during the term of this Agreement, the parties shall comply with all applicable federal, tribal, and state laws and regulations.

6. Culturally Relevant Services

In performing work pursuant to any Program Agreement, the Indian Nation may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and particularly suited to and/or particularly located for access by member of the Indian Nation's tribe or other tribes, in accordance with tribal laws and policies.

7. Debarment Certification

The Indian Nation, by signature to this Agreement, certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in the Agreement by any Federal department or agency. The Indian Nation also agrees to include the above requirement into any subcontracts entered into in connection with the Indian Nation's duty to provide services under this Agreement.

8. Hiring and Employment Practices

The Indian Nation may give preference in its hiring and employment practices to members of the Indian Nation, or other Indian Nations, who have met all requirements for that position, including state requirements, and as may be provided by tribal laws and policies.

9. Independent Status

For purposes of this Agreement, the Indian Nation acknowledges that the Indian Nation is not an officer, employee, or agent of DSHS or the State of Washington. The Indian Nation shall not hold out itself, or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The Indian Nation shall not claim for itself or its employees any rights, privileges, or benefits which would accrue to an employee of the State of Washington. The Indian Nation shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Indian Nation or its employees.

10. Inspection

During the term of this Agreement and for one (1) year following termination or expiration of the Agreement, the Indian Nation shall provide reasonable access to the Indian Nation's place of business, relevant Indian Nation records, client records, to DSHS and to any authorized agent of the state of Washington or the federal government in order to monitor, audit, and evaluate the Indian Nation's performance and compliance with applicable laws, and regulations that pertain solely to this Agreement.

11. Maintenance of Records

During the term of any Program Agreement and for six years following termination or expiration of the Program Agreement, the parties shall maintain records sufficient to document performance of all acts required by any Program Agreement and applicable statutes, regulations, and rules.

12. Responsibility

The Indian Nation shall be responsible for the acts or omissions of the Indian Nation and its agents, contractors, subcontractors, employees, and officers. DSHS shall be responsible for the acts or omissions of DSHS and its officers, employees, and agents.

13. Severability

The provisions of the Agreement are severable. If any provision of the Agreement, including any provision of any document incorporated by reference, is held invalid by any court that invalidity shall not affect the other provisions of the Agreement and the invalid provision shall be considered modified to conform to existing law and regulations.

14. Subcontracting

Either party may subcontract services to be provided under Program Agreements. In any event, the Indian Nation shall remain ultimately responsible to DSHS for performance of all duties and obligations within this Agreement. Each party shall be responsible for the acts and omissions of its subcontractors.

15. Termination Due to Change in Funding

- a. If the funds that DSHS relied upon to establish any Program Agreement are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such funding, and such changes materially affect the ability of DSHS to provide funds or to perform under the Program Agreement, DSHS shall notify and consult with the Indian Nation as soon as practicable and, as a last resort, may terminate the Program Agreement by providing at least five (5) business days' written notice to the Indian Nation.
- b. If funds are available, DSHS shall pay the Indian Nation for its reasonable costs that directly relate to termination of the Program Agreement. The parties may identify such costs in any Program Agreement. Such costs may include, but are not limited to, close-out costs, unemployment costs, severance pay, retirement benefits, reasonable profits, and termination costs associated with any subcontract.

16. Treatment of DSHS Assets

Except as otherwise provided in any Program Agreement, title to all assets (property) purchased or furnished by DSHS for use by the Indian Nation during the Program Agreement term shall remain with DSHS. During the term of any Program Agreement, the Indian Nation shall protect, maintain, and insure all DSHS property in the Indian Nation's possession against loss or damage.

17. Waiver

Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of the Agreement. Only the Contracts Administrator or designee has the authority to waive any term or condition of the Agreement on behalf of DSHS.

18. Statement of Work

a. CASE REQUIREMENTS

Before sending DCS a referral for federal offset certification, the Tribe must ensure that the debt is based on an established Central Council Tlingit & Haida Tribal court child support order, and that the case meets the federal requirements listed in 45 CFR 303.72 (a), or successor or replacement statute. The requirements are currently as follows:

- (1) The NCP's name and social security number (SSN) must be correct.
- (2) The Tribe must provide a current address for a nonassistance CP.
- (3) For a TANF, Foster Care-Aid to Families with Dependent Children (FC-AFDC) case, or medical arrears case, the debt must be at least \$150 and past due for at least thirty (30) days.
- (4) For a nonassistance case the debt must be at least \$500.
- (5) Spousal support may be certified providing child support and spousal support are payable under the same order.

b. REFERRAL PROCESS FROM TCSU

- (1) The Tribe requests federal offset services by sending a referral to the Everett DCS field office for each NCP case they want certified. The referral will include, but is not limited to:
 - (a) Child Support Enforcement Transmittal #1 – Initial Request
 - (b) Relevant court orders
 - (c) Debt calculation
- (2) The Tribe will indicate on the referral that they are requesting Federal Income Tax Refund Offset Services.

c. PAYMENT OF ADMINISTRATIVE COSTS

- (1) DCS will invoice the Tribe for a one-time programming cost of \$1,134.06.
- (2) The Tribe agrees to pay DCS \$14.00 per case One Time Per Case Cost for each case referred for first time Case Set Up, Certification, and Closure (field office staff time).
- (3) The Tribe agrees to pay DCS \$143.00 per month Ongoing Fixed Monthly Costs itemized below:
 - (a) \$11.00 per month for case count for invoicing (TRT CSPA staff time)
 - (b) \$54.77 per month for SEMS Reports/Billing (ITAS 6 staff time)
 - (c) \$29.94 per month for SEMS Reports/Billing (ITAS 5 staff time)
 - (d) \$39.45 per month for Fiscal Invoicing/Payment Review (FA3 staff time)
 - (e) \$7.84 per month for Fiscal Invoicing/Payment Review (FA1 staff time)
- (4) The Tribe agrees to pay DCS a Variable Monthly Per Case amount of \$4.42 per case per

month active in SEMS for data storage/maintenance costs and case debt update review.

- (5) The Tribe agrees to pay DCS for Variable Costs based on individual incidents summarized below:
 - (a) Electronic Disbursements to Tribe invoiced at \$0.06 per transaction
 - (b) \$108.89 for each IRS Adjustment/Administrative Review required (3 hours SEO staff time)
- (6) DCS will invoice the Tribe monthly for administrative costs. The invoice will summarize the previous month administrative costs associated with the Tribe's referred cases.
 - (a) Within 30 days of the date of the DCS Billing Statement, the Tribe will pay for the DCS administrative costs associated with the Tribe's referred cases activity for the previous month.
- (7) Within 30 days of the date of the DCS Billing Statement, the Tribe will pay for the administrative costs that the federal government charges each State for federal offset. Subject to any future changes, these federal charges are currently as follows:
 - (a) \$.54 for the pre-offset notice sent to the NCP
 - (b) \$14.65 if federal offset funds are intercepted
 - (c) \$16.00 if administrative offset funds are intercepted

Exception: DCS will not bill the Tribe for these costs if DCS, on its own behalf, also certified for federal offset another debt for the same NCP in the same tax year.

d. DISTRIBUTION OF FEDERAL OFFSET FUNDS

- (1) DCS will distribute federal income tax refunds owing to the Tribe within two (2) days of receipt if one of the following is true:
 - (a) The NCP did not file a joint return.
 - (b) The NCP filed a joint return, and an injured spouse claim was filed with the original income tax return.
- (2) If the NCP filed a joint return on a non-TANF case, but no injured spouse claim was filed with the original income tax return:
 - (a) DCS will distribute up to 50% of the income tax funds owing to the Tribe within 2 days of receipt.
 - (b) DCS will distribute the remaining funds within 120 days of receipt, unless an injured spouse claim is filed.
 - i. If the CP claims that the 120 day delay of the tax refund causes undue hardship, DCS will forward the request to the Tribe. The Tribe decides if and how to grant relief regarding the portion of the funds being held on the Tribe's behalf.
 - ii. If the Tribe decides it wants to send any funds to the CP before the 120 days, the Tribe must notify the DCS Tribal Liaison in writing of the decision. DCS

Headquarters will then send the funds to the Tribe for distribution to the CP.

- (c) If DCS distributes funds to the Tribe, and an injured spouse claim is later filed, the Tribe agrees to repay the funds. DCS will work with the Tribe to establish a payment plan for the repayment of these funds to DCS. (The majority of injured spouse claims are filed within 120 days of DCS receiving the funds, however the NCP's spouse has 6 years to file a claim).
- (3) DCS does not automatically hold in suspense any portion of the funds on a TANF case.
- (4) The Tribe agrees to repay DCS funds if a portion of the funds distributed to the Tribe must be returned due to:
 - i. The wrong individual being certified.
 - ii. Debt inaccuracy. (This does **not** apply if DCS caused the debt inaccuracy.)

DCS will work with the Tribe to establish a payment plan for the repayment of these funds to DCS.

- (5) The Tribe agrees to return to DCS any portion of the funds that result in an overpayment due to NCP payments following certification.

Exception: If the Tribe verifies with DCS that the NCP does not have any other debts certified for federal offset, then the Tribe can refund the payment directly to the NCP.

e. ADMINISTRATIVE REVIEW ON CASES REFERRED BY TCSU

If the NCP requests an administrative review because the NCP contests certification of a debt to the Internal Revenue Service (IRS):

- (1) DCS will send a copy of the administrative review to the Tribe.
- (2) If there is **only** tribal interest in the certified funds, the Tribe will perform the informal settlement process and the administrative review process and notify DCS in writing of the decision.
- (3) In cases where there is a joint tribal and DCS interest in the certified funds, DCS and the Tribe will work together to provide the administrative review:
 - (a) DCS will make the final determination on the portion of the debt it certified on its own behalf.
 - (b) The Tribe makes the final determination on any debt certified on its behalf, and provides DCS with written recommendations instructing DCS if and how to provide relief to the NCP.

f. CASE CLOSURE

DCS federal offset cases from TCSU should be closed each year after the offset has been received and distributed. These cases can be reopened the next year if federal offset is again requested.

The Tribe shall request closure of the case after the TCSU receives the IRS offset funds for the tax year. The Tribe requests closure by completing a Child Support Enforcement Transmittal #2 form and indicating that they are requesting closure.

DCS will not close the case until one of the following occurs:

- (1) The Tribe sends DCS a Child Support Enforcement Transmittal #2 form, requesting closure.
- (2) The federal offset funds pay off the entire debt.

g. DESCRIPTION OF THE DATA

- (1) DCS shall send to the Tribe applicable federal offset funds and provide designated staff of the Tribe with IRS information from SEMS, necessary for the processing and distribution of those funds.
 - (a) At the request of TCSU, DCS shall release the following information:
 - i. Whether a joint return was filed.
 - ii. Whether an injured spouse claim has been filed.
 - iii. The total amount of the intercept if a hardship review is requested.
 - iv. The spouse's name in the case of a joint filing if a refund is necessary due to an overpayment.
 - v. The address of all parties on the return if a refund is necessary due to an overpayment.
 - vi. All documentation pertaining to the request for an administrative review or a hardship review.
 - (2) The TCSU will provide monthly spreadsheets to DCS listing critical debt information for each case certified for federal offset (see h.1.c.).

h. ACCESS TO FEDERAL OFFSET PAYMENTS AND RELATED DATA

- (1) METHOD AND FREQUENCY OF ACCESS/TRANSFER
 - (a) DCS will provide the data listed in g. (see above) by the following methods: mail, secured email, telephone, or fax.
 - i. If mailed, the data (hard copy) will be sent through the United States Postal Service (USPS) with tracking and delivery confirmation.
 - ii. If faxed, the receiving fax machine must be located so that it is only accessible by Tribal staff with authorized access to the data. DCS will include a fax cover sheet that notifies the recipient of the sensitivity of the data, and to report the disclosure and confirm destruction of the fax if it was received by an unintended recipient.
 - (b) DCS will send applicable federal offset funds to the Tribe via electronic funds transfer (EFT).
 - (c) The TCSU must submit a monthly spreadsheet to the Tribal Liaison in the local DCS field office by the 10th of every month. The spreadsheet is required to ensure that the debt certified for federal offset is accurate. The spreadsheet must include the following information for each case:
 - i. NCP's name and social security number

- ii. CP's name
- iii. DCS case number (D#) if known
- iv. Balance of the debt as of the last day of the prior month
- v. Date and amount of last payment included in the debt balance

(2) PERSONS HAVING ACCESS TO DATA

All SEMS records are confidential and shall only be used for child support requirements of the TCSU.

All information, including how much was received, as a result of federal offset is confidential. The Tribe shall ensure that only designated staffs have access to information necessary for the processing and distribution of funds received from federal offset.

i. SECURITY OF DATA, CONFIDENTIALITY, AND NONDISCLOSURE

- (1) The Tribe agrees to comply with IRS Publication 1075, which includes very specific criteria for maintaining, using, storing, safeguarding, reporting and destroying FTI. This includes, but is not limited to:
 - (a) A taxpayer's identity and the nature, source, or amount of a payment.
 - (b) Making sure any notes and all FTI are shredded appropriately and timely (5/16 inch on the bias or cross cut shredded).
 - (c) Not sending FTI in the text of E-mail. Messages containing FTI must be attached and encrypted.
 - (d) Confirming a NCP's address from IRS information via a second source.
 - (e) Activating a screensaver password on a PC at all times.
 - (f) Securing IRS information at all times using two barriers under normal security: secured perimeter/locked container, locked perimeter/secured interior, or locked perimeter/security container. During duty hours, deny access to areas containing FTI by restricted areas, security rooms, or locked rooms. During non-duty hours, FTI in any form (hard copy, printout, photocopy, notes, backups, etc.) must be protected through a combination of methods: secured or locked perimeter; secured area; or containerization (locked containers, security containers, safes or vaults). FTI must be containerized in areas where other than authorized employees may have access afterhours.
 - i. Securing keys to IRS cabinet and account for all keys on a master key log.
 - ii. Maintaining logs that track receipt, use and destruction of IRS reports.
 - iii. Maintaining up-to-date access list to restrict access to FTI.
 - iv. Testing IRS locking cabinet periodically to ensure security.
 - v. Ensuring adequate back-up coverage exists to maintain consistent security.
 - vi. Preferably not co-mingling data with FTI. If FTI is co-mingled with other data, all co-mingled data will be protected as FTI.

- (2) All Tribal staff with access to income tax information and payments must:
 - (a) Be briefed on security procedures and instructions for protecting federal tax information.
 - (b) Yearly review the IRS Confidentiality and Security training document (**See Exhibit**) and sign a DSHS Confidentiality Statement Tribal Employee form.
- (3) The Tribe shall take reasonable precautions to secure against unauthorized physical and electronic access to data. This includes protection of the following:
 - (a) Confidential data will be stored centrally, on secure servers. Servers and backup media will be kept in locked rooms, with access limited to authorized persons. The data will be viewed locally on workstation computers, via network shares, access to which shall be restricted to authorized users through the use of access control lists (ACLs) and authentication with a unique user ID and complex password and/or other, secure authentication mechanism. Passwords will be changed at least every 90 days.
 - (b) Confidential data stored by the Tribe may not be accessed remotely — no use of external networks (e.g. the Internet) will be allowed.
 - (c) Confidential data will not be transferred to any portable device or media e.g. laptops, optical discs (CDs/DVDs), flash memory devices (thumb drives), or personal digital assistants (PDA). However, confidential data may be copied to media as part of a secure, central backup process.
 - (d) Printed working documents will be secured when work stations are unattended.
 - (e) Access to work areas will limited to authorized staff only.
- (4) The Tribe shall track the location of any copies or backups of data provided by DSHS. The method of tracking shall be sufficient to provide the ability to audit the protections afforded the copied data sets.
- (5) The Tribe shall notify the DSHS Contact listed on page one of this agreement within one (1) business day, upon discovery of any compromise or potential compromise of confidential or sensitive data shared by DSHS with the Tribe.
- (6) The Tribe will promptly destroy the data when the work is completed and/or the need for retention of the records is no longer required. Paper documents may be shredded or pulped, and magnetic or electronic media may be handled as stated below in (7) below.
- (7) The Tribe shall remove data received under this Agreement from computer equipment after its been used for its stated purposes by using a "WIPE" utility for purging the Data from electronic storage media, degaussing the media, or physically destroying the media in such a way that Data cannot be recovered. Media includes, but is not limited to, the following:
 - (a) Hard drives (workstation and network) – Zero-fill or Wipe utility to destroy data in file space.
 - (b) Floppy disks – Physical destruction of the media.
 - (c) Magnetic tapes (reels or cartridges) – Degaussing or cross-cut shredding of the tape
 - (d) CDs/DVDs – Scour readable (label) side with coarse abrasive or shred.

- (e) Zip/JAZZ disks and other removable magnetic media (other than floppy disks) – Media and associated acceptable data destruction methods are: Zero-fill or Wipe utility.
- (f) Flash memory and memory cards (Compact Flash, Secure Digital, Memory Stick, etc.) – Zero-fill or Wipe utility.
- (8) In the case of hardware failure, the Tribe must protect data by either removing the hard drive before shipping equipment for repair, or a tribal child support employee will be present while equipment is repaired on site.
- (9) Data provided by DSHS remains DSHS property. The Tribe will dispose of all copies of any data sets in its possession within 30 days of the date of termination, and certify such destruction to DSHS. DSHS shall be responsible for destroying the returned documents to ensure confidentiality is maintained.
- (10) Data provided by the Tribe will be stored and handled by DSHS, but will remain tribal property.
- (11) In accordance with 26 USC 6103, 42 USC 654 (26), 45 CFR 309.80, RCW 26.23.120, RCW 74.04.060, and WAC 388-14A-2105 through WAC 388-14A-2160, any information concerning individuals who owe a support obligation or for whom support enforcement services are being provided is private and confidential. The Tribe shall protect information according to applicable state, federal and tribal laws.
- (12) The Tribe shall not disclose, transfer, or sell any information as described in this agreement to any party in whole or in part, or to any individual or agency not specifically authorized by this agreement except as provided by law.

j. MONITORING

- (1) Annually, the Tribe will ensure that all Tribal staff with access to FTI:
 - (a) Take the yearly training (review the IRS Confidentiality and Security training document).
 - (b) Sign a new DSHS Confidentiality Statement Tribal Employee form.
- (2) To ensure FTI safeguarding measures are maintained, the Tribe will:
 - (a) Perform internal inspections.
 - (b) Complete an IRS confidentiality and security program report and yearly submit it to the DSHS Contact listed on page 1 of this contract. The Tribe will provide the report on or before the last business day of January of each year. DCS will include a synopsis of the report in the DCS Safeguard Activity Report (SAR).
- (3) The Tribe will monitor compliance with requirements of this agreement.
- (4) DCS may test compliance with the terms of this Agreement by reviewing the IRS confidentiality and security program report and through contact with the Tribe to monitor compliance.

k. LEGAL REFERENCES IN THIS CONTRACT

All references in the contract to IRC, USC, CFR, RCW, WAC chapters or sections, or Tribal Law shall include any successor, amended, or replacement code, regulation, or statute.

19. Dispute Resolution

4. DSHS and the Tribe agree to resolve disputes that arise as follows:

- a. DSHS and the Tribe shall attempt to resolve the matter through informal discussions and negotiations.
- b. If informal discussions prove unsuccessful, then the parties agree to submit their disputes to a Dispute Board. Each party to this Agreement shall appoint one member to the Dispute Board. The members shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms, and applicable statutes and regulations and make a determination regarding the dispute.

Either of the parties may request intervention by the Washington State Governor at any time. These dispute resolution procedures shall not modify or reduce the Indian Nation's rights to judicial proceedings.

20. Choice of Law

Federal and Washington laws concerning confidentiality and disclosure apply to the Indian Nation for the sole purpose of performing the terms of this agreement.

21. Amendments or Termination

a. AMENDMENTS

This contract may be altered or amended by written agreement signed by both parties.

b. TERMINATION

- (1) Either party may terminate the agreement by giving the other party at least thirty (30) calendar days written notice.
- (2) The Contracts Administrator may terminate the agreement:
 - (a) For default, in whole or in part, by written notice to the Tribe if DSHS has a reasonable basis to believe that the Indian Nation has breached any provision or condition of the Agreement.
 - (b) If an external entity (i.e. Internal Revenue Service, federal Office of Child Support Enforcement), determines that a breach has occurred by DSHS or by the Tribe.
 - (c) The Contracts Administrator shall give the Tribe at least ten (10) business days notice of DSHS' intent to terminate the agreement, along with a summary of the facts supporting such termination (i.e. Monthly Spreadsheet not provided; Administrative Costs are not paid within 30 days of billing; unauthorized use, inspection or disclosure of federal tax return and return information; etc.).
 - (d) The Tribe shall have at least ten (10) business days to cure the default or longer if agreed by DSHS and the Tribe. In the event of a continuing pattern of default, the Contracts Administrator shall not be required to provide a cure period.

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL

EXHIBIT A

IRS CONFIDENTIALITY AND SECURITY

Employee Awareness Training Points from Internal Revenue Code (IRC) Sections

TAX RETURN INFORMATION:

- *IRS provides certain return information to federal, state and local child support agencies.*

GENERAL RULE – 6103(a):

- *Returns and return information shall be confidential, and except as authorized – no employee of the U.S., no employee of any State, any local child support enforcement agency...shall disclose any return information obtained by him in any manner in connection with his service as an employee...*

DISCLOSURE:

- *The making known of any return or return information in any manner to anyone.*

IRC §7213 UNAUTHORIZED DISCLOSURE:

- *Willful disclosure of return/return information*
- *Felony*
- *Fine not to exceed \$5,000 or*
- *Imprisonment, not to exceed five (5) years, or both*
- *Cost of prosecution, and*
- *Dismissal*

IRC §7213A UNAUTHORIZED INSPECTION:

- *Fine not exceeding \$1,000, or*
- *Imprisonment not to exceed 1 year, or both, with*
- *Cost of prosecution*

IRC §7431 CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE OF RETURN/RETURN INFORMATION:

- *The greater of: \$1,000 for each act of unauthorized inspection or disclosure; or*
- *Actual damages plus*
- *Punitive damages plus*
- *The cost of the action.*

SAFEGUARDS:

- *IRC §6103(p) (4): as a condition of receiving return/return information must comply with specific criteria for maintaining, using, storing, reporting and destroying return/return information.*

IRC §6103(a)

- *Returns and return information shall be confidential...no employee...shall disclose any return information obtained by him in any manner**

**This does not apply to tax information received directly from the noncustodial parent, custodial parent or their representative.*

IRS CONFIDENTIALITY AND SECURITY

Employee Awareness Training Points Staff Procedures

YOU MAY DISCLOSE IRS PAYMENT TYPE AND AMOUNT TO:

- *Noncustodial parent*
- *IV-E Agency (Foster Care)*
- *Other IV-D Agencies (Child Support)*
- *IV-D Contractors: Prosecutors and Attorneys General*

STAFF WITH ACCESS MUST:

- *Only access IRS information when necessary to perform their duties*
- *Shred any note jotted down from IRS report information*
 - *This includes addresses without taxpayer identifying information. Even without the taxpayer's identity the information retains it's IRS nature and all the same safeguards necessary for protecting IRS reports must be followed.*
- *Be aware that "B9" payment type on the Case Financial screen is considered IRS information.*
- *Confirm NCP address from IRS report via a second source (i.e., US Postal Service, employer, etc.) before adding it to the NCP address screen.*
- *Activate the screensaver password on personal computer at all times (be sure to reactivate after service performed on the computer)*

IRS CUSTODIAN MUST:

- *Secure IRS reports at all times,*
- *Secure keys to IRS cabinet and account for all keys on a Master Key Log,*
- *Maintain logs that track receipt, use and destruction of IRS reports within their office,*
- *Maintain up-to-date Access List to restrict IRS report access to only those staff meeting annual training requirement*
- *Make sure any notes and all IRS reports are shredded appropriately and timely (5/16" on the bias or cross cut shredded)*
- *Test IRS locking cabinet lock periodically to ensure security*
- *Ensure that adequate back up coverage exists to maintain consistent security when primary IRS Custodian is gone*